

Remarks

The claims were amended in accordance with the amendments above. The amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Claims 14-17, 73-79, and 81-84 were rejected under 35 USC §102(b) as being anticipated by Cohen (U.S. Pat. 6,236,330). Claims 22-23 and 80 were rejected under 35 USC §103(a) as being unpatentable over Cohen in view of Official Notice. Claims 18-19 were rejected under 35 USC §103(a) as being unpatentable over Cohen in view of Cragun (U.S. Pat. 5,504,675). Applicant respectfully traverses the rejections for the reasons set forth below.

As an initial matter, Applicant respectfully submits that the Office's citation of Cohen as a 102(b) reference was erroneous. The actual filing date for the present application is 05/17/2000, while the issue date for Cohen is 05/22/2001. A reference having a publication date that is *after* the filing date of an application under examination simply cannot constitute a 102(b) reference against that application. And, as discussed below, Cohen is not prior art under 102(e).

As noted in the Amendment and Response filed by Applicant on 08/07/2006, the specification of the present application was amended on 09/17/2003 to claim priority to U.S. Application Serial Nos. 09/416,333 (filed 10/12/1999), 09/315,111 (filed 05/18/1999), and 09/301,102 (filed 04/28/1999). Because the present application was filed before 11/29/2000, the time periods provided by 37 CFR §1.78 for making such priority claims do not apply, and the time periods did not apply at the time the priority claim was made. See 37 CFR 1.78(a)(2)(ii)(B). Accordingly, pursuant to 35 U.S.C. §120, and as set forth in MPEP 201.11, Applicant is entitled to a priority date of 04/28/1999 for those claims supported by Application Serial No. 09/301,102. Applicant further submits that all of the claims of the present application, as amended herein, are fully supported by the disclosure of U.S. Application Serial No. 09/301,102, and are therefore entitled to a priority date of 04/28/1999.

Cohen has an actual filing date of 10/12/1999. Cohen purports to claim priority to application serial number 09/185,061 ("the Cohen Parent") as a continuation-in-part. However,

the teachings of Cohen will not be entitled to a reference date that predates 10/12/1999 unless the Cohen Parent provides adequate support for such teachings in accordance with 35 U.S.C. §112. MPEP 2136.03, particularly in subsection IV, makes it clear that references such as Cohen are not *automatically* accorded an effective reference date going back to the filing date of a purported parent application. Rather, as subsection IV of MPEP 2136.03 clearly states, “[i]n order to carry back the 35 U.S.C. 102(e) critical date of the U.S. patent reference to the filing date of a parent application, the U.S. patent reference must have a right of priority to the earlier date and the parent application must support the invention claimed as required by 35 U.S.C. 112, first paragraph.”

In the outstanding Office Action, the Office has relied upon the disclosure found at col. 5, lines 5-12, of Cohen in formulating the claim rejections. However, this portion of the Cohen patent, or any similar disclosure, is not found in the Cohen Parent. Accordingly, such disclosure by Cohen is not entitled to a reference date that is any earlier than the actual filing date of Cohen, which is 10/12/1999. This reference date for the subject matter of Cohen relied upon by the Office is after the present Applicant’s priority date of 04/28/1999.

In view of the foregoing, the subject matter of the Cohen patent relied upon in rejecting the claims of the present application is not prior art against any of those claims. Because the rejections in the Office Action dated 11/02/2006 improperly rely on Cohen as prior art, they cannot be sustained. Applicant therefore respectfully requests that the rejections be withdrawn.

Applicant further respectfully requests that the Office make an explicit acknowledgement, in the next communication from the Office, of Applicant’s claim of priority to U.S. Application Serial No. 09/416,333, filed 10/12/1999, with the present application being a continuation-in-part of that prior application, with that prior application being a continuation-in-part of U.S. Application Serial No. 09/315,111, filed 05/18/1999, which is a continuation-in-part of U.S. Application Serial No. 09/301,102, filed 04/28/1999.

To the extent that the present amendments constitute a narrowing of the claims, such narrowing of the claims should not be construed as an admission as to the merits of the prior